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OFFICE OF PETITIONS

In re Application of :
Brittingham et al. : DECISION DISMISSING
Application No. 10/758,274 : PETITION
Filed: 16 January, 2004 :
Attorney's Docket No. 7767-200246 :

This is a decision on the petition filed on 25 June, 2004, requesting that the above-identified application be accorded a filing date of 16 January, 2004, with Figures 8 & 9 described in the specification of the specification as a part of the original disclosure.

The petition is dismissed.

The application was filed on 16 February, 2004.

Accordingly, on 28 April, 2004, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, stating that the application had been accorded a filing date of 16 January, 2004, but that Figures 8 & 9 described in the specification appeared to have been omitted. Additionally, applicants were advised that the statutory basic filing fee, the oath or declaration, and a surcharge for their late filing was due.

In response, on 25 June, 2004, the present petition and, *inter alia*, two (2) sheets of drawings containing Figures 8 & 9 described in the specification was filed. Petitioners argue that the sheets of drawings containing Figures 8 & 9 were filed with the other application papers on 16 January, 2004, but were subsequently misplaced in the U.S. Patent and Trademark Office (Office). In support, a copy of petitioners' postcard receipt was supplied with the present petition. The postcard receipt shows an Office date stamp of 16 January, 2004, and identifies the application by the first named inventor's name, and attorney docket number, and acknowledges receipt of, *inter alia*, "Formal

Drawings (10 sheets, 1-11 Figs.)". Petitioners request that the application, including two (2) sheets of drawings containing Figures 8 & 9 described in the specification, be accorded a filing date of 16 January, 2004.

Petitioners argument has been considered, but is not persuasive. The showing of record is that 10 sheets of drawings containing Figures 1A, 1B, 2, 3, 4, 5A, 5B, 6, 7, and two (2) copies of Figures 10 and 11, were received in the Office on 16 January, 2004, and petitioners' postcard receipt reflects that the Office received the items listed above. While the postcard itemizes the filing of 10 sheets of drawings, the postcard receipt does not itemize the filing of Figures 8 and 9. Absent a showing that Figures 8 and 9 were located within the 10 sheets of drawings received in the Office on 16 January, 2004, petitioners simply have no evidence that Figures 8 & 9 were located among the application papers received in the Office on that date.

Petitioner may submit Figures 8 & 9 in the form of a preliminary amendment. If Figures 8 & 9 are submitted as a preliminary amendment, they will be reviewed by the examiner for new matter.

As the petition resulted from applicant's filing error and not as a result of an error on the part of the Office, the petition fee will not be refunded.

The application will be processed and examined using the application papers present on filing. The copies of drawings, including Figures 8 & 9, filed with the present petition will not be used for processing or examination, but will be retained in the application file.

The address on the present petition is different than the address of record. A courtesy copy of this petition will be forwarded to the address on the petition. All future correspondence, however, will be mailed solely to the address of record.

The application file is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 16 January, 2004, using the application papers filed on that date.

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.

A handwritten signature in black ink, appearing to read "D. Wood", is positioned above the typed name.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

cc: VENABLE LLP
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